

12/18/06
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LEASE
between
TOWN OF ACTON
and
COMMON GROUND DEVELOPMENT CORPORATION

Dated as of December 18, 2006

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LEASE

This lease (this "Lease") is entered into as of this 18th day of December, 2006, by and between the Town of Acton, a body politic and corporate of the Commonwealth of Massachusetts organized pursuant to Massachusetts General Laws Chapter 121B (the "Town of Acton"), and Common Ground Development Corporation, a non-profit housing development subsidiary of Community Teamwork, Inc., a non-profit Massachusetts corporation ("Tenant").

BACKGROUND

Whereas Chapter 487 of the Acts of 2002, entitled "An Act Authorizing the Town of Acton to Lease a Certain School Building for Residential Purposes for 50 Years," provides that, "Notwithstanding any general or special law, rule or regulation to the contrary, the town of Acton may lease the historic Towne School building and so much land surrounding and providing the access to the building as is set forth in the votes of the school committee and the board of selectmen, for a term of not more than 50 years, for the purpose of preserving the building and adapting it for residential use, including but not limited to low and moderate income housing use." (§ 1).

Whereas Chapter 487 of the Act of 2002 further provides that, "The board of selectmen may issue a request for proposals for such purposes, to determine the terms and conditions of such request, to accept any proposal or negotiate changes in any proposal, or to reject all proposals, as it determines to be in the best interests of the town, and to take all other actions as may be necessary or desirable to carry out such project." (§ 2).

Whereas Section 16 of Chapter 30B of the General Laws provides that, "If a governmental body duly authorized by general or special law to engage in such transaction determines that it shall rent, convey, or otherwise dispose of real property, the governmental body shall declare the property available for disposition and shall specify the restrictions, if any, that it will place on the subsequent use of the property."

Whereas pursuant to the foregoing legislative authority the Town of Acton issued a Request for Proposals ("RFP") for the long-term lease and renovation of the Towne School Property (the "Property"), for affordable housing use.

Whereas pursuant to the foregoing legislative authority the RFP specified a Term of 50 years for the lease of the property.

Whereas a feasibility study of the Property determined that the existing two-story building on the Property was suitable for conversion and renovation into multiple units of mixed income rental housing.

Whereas pursuant to the foregoing legislative authority the RFP specified certain general terms and conditions for the renovation of the existing two-story building on the property into multiple units of mixed income rental housing to be operated by the Tenant over the term of the Lease.

Whereas the Tenant submitted a response to the RFP in which the Tenant specified its anticipated housing improvements to the Property for the Tenant's use as an affordable housing rental facility.

Whereas the term of the Lease (50 years) equals or exceeds the expected useful life of the Tenant's anticipated housing improvements to the Property.

Whereas the Lease has been structured to allow the Tenant to remove at the termination of the Lease any improvements made by it to the Property during the term of the Lease.

Whereas the Lease has been structured to restrict certain housing units on the Property to income-eligible households.

Whereas the Lease has been structured such that the Town as Lessor shall not manage the Tenant's construction of the housing improvements or thereafter operate the housing.

Now therefore, for adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the

Town of Acton and Tenant now agree as follows:

ARTICLE 1

PREMISES

1.1 Lease of Premises. The Town of Acton, for and in consideration of the covenants and agreements hereinafter contained on the part of Tenant to be paid, kept and performed, hereby leases to Tenant, and Tenant hereby leases from the Town of Acton, for the Term (as defined in Section 2.1 below) upon the terms and conditions set forth herein, the following described premises (hereinafter called the "**Premises**"):

A certain parcel of land (the "**Land**") located at the corner of Massachusetts Avenue and Charter Road in the Town of Acton, as more particularly described in **Exhibit A** attached hereto and made a part hereof and more particularly shown on the plan attached hereto as **Exhibit B** and made a part hereof; the existing two-story Towne School building (the "**Building**") and all other improvements, buildings, structures, utility lines not owned by the respective utility company, parking areas and fixtures that are now or hereafter located on, installed in, or attached to, the Land (collectively, the "**Improvements**"); and all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the Land or the Improvements or the use or occupancy of the Land or the Improvements, whether or not of record.

1.2 Reserved Rights. The Town of Acton reserves the following rights and imposes upon Tenant the following obligations in connection with the Premises:

(a) Upon reasonable prior notice to Tenant, the Town of Acton shall have the right to access and enter upon the Premises for the purposes of inspection, complying with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and

requirements of all public authorities and exercising any right reserved to the Town of Acton by this Lease. The Town of Acton shall use commercially reasonable efforts to minimize interference with or disruption of Tenant, Tenant's business, its occupants, its operators and its lessees.

(b) Upon reasonable prior notice to Tenant, the Town of Acton shall have the right to apply to have the Building and/or the Property listed on the National, State, and/or Local Register(s) of Historic Places during the Term of the Lease..

1.3 Condition of the Premises. Tenant acknowledges that it has leased the Premises after a full and complete examination of the Premises, including, without limitation, any encumbrances, subsurface conditions, existing structures thereon, if any, the presence of any asbestos or other Hazardous Materials (as defined in Section 12.4 below) located on, in or under the Premises or within such structures, legal title, their present uses and non-uses, and laws, ordinances, and regulations affecting the same and the ability of Tenant to use the Premises for its intended purposes, and accepts the same in the same condition in which they or any part thereof now are, and except as otherwise expressly provided in this Lease, waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of the Town of Acton, and without recourse to the Town of Acton.

ARTICLE 2

TERM

2.1 Term. The Premises are hereby leased unto Tenant and its successors and assigns for a fifty (50) year term (the "**Term**"), commencing on the earlier of the date of the construction loan closing for the Initial Improvements or October 1, 2007 (the "**Commencement Date**"), and unless earlier terminated in accordance with the provisions hereof, ending on the next business day before the fiftieth anniversary of the Commencement Date (the "**Termination Date**"). Tenant shall deliver thirty (30) days prior written notice to the Town of Acton before the date of the construction loan closing mentioned above.

2.2 Early Termination. Tenant agrees that if construction of the Initial Improvements has not commenced (as defined in Section 3.1 below) by the Outside Construction Start Date (as defined in Section 3.1 below), or if Final Completion (as defined in Section 3.1 below) of the Initial Improvements has not occurred within 12 months of the Outside Construction Start Date (as defined in Section 3.1 below), the Town of Acton may elect to terminate this Lease upon ninety (90) days' written notice to Tenant; provided, however, that if the Initial Improvements are commenced within such ninety (90) day period and diligently pursued to completion or if the Initial Improvements are completed within such ninety (90) day period as the case may be, such termination notice shall be null and void and this Lease shall continue in full force and effect.

2.3 Early Access. Prior to the Commencement Date hereunder, Tenant (and Tenant's consultants) shall be entitled to access the Premises at reasonable times upon prior written notice to the Town of Acton to inspect the Premises in preparation for Tenant's tenancy.

Notwithstanding the foregoing, Tenant shall use diligent efforts to schedule any inspections hereunder in order to minimize the number of times that Tenant accesses the Premises prior to the Commencement Date hereof. Tenant shall only have the right to access the Premises in the company of the Town of Acton's representative(s) or agent(s), and any inspections conducted by Tenant shall be non-invasive unless the Town of Acton consents otherwise. The Town of Action will use reasonable efforts to accommodate Tenant's proposed inspection schedule(s), and notwithstanding anything set forth herein to the contrary, Tenant shall be bound by the terms of the indemnification provisions in Section 7.13 hereof for any such access.

ARTICLE 3

TENANT WORK

3.1 Initial Improvements.

(a) In order to render the premises suitable for Tenant's intended use, Tenant shall have the right to construct the Tenant's improvements (the "**Initial Improvements**") described in Exhibit C attached hereto and incorporated herein (the "**Schematic Design Plans**"). Tenant intends to commence work on the Initial Improvements as soon as reasonably possible following the Commencement Date but not later than one (1) year after the date hereof (the "**Outside Construction Start Date**"). Once Tenant commences construction on the Initial Improvements, Tenant shall thereafter diligently and continuously prosecute to Final Completion (as defined below) in accordance with the Final Plans (as defined in Section 3.3 below) and as modified to meet Building Permit and other permit requirements (as set forth in Section 3.4(a)). For purposes of this Lease, construction of the Initial Improvements shall be deemed to have "**commenced**" upon the commencement of actual physical work (including, without limitation, site work) on the Premises pursuant to a full, unconditional building permit for the construction of the Initial Improvements, and "**Final Completion**" of the Initial Improvements will be deemed to have occurred upon the issuance of a permanent certificate of occupancy for the Initial Improvements. The date upon which Final Completion of the Initial Improvements occurs shall be referred to herein as the "**Final Completion Date.**"

(b) Notwithstanding the foregoing, if the commencement of the Initial Improvements is prevented or delayed beyond the Outside Construction Start Date because of strikes, lockouts, labor troubles, inability to procure materials, power failures, riots, insurrection, war, appeals or litigation relating to any comprehensive permit applications or other required permits or licenses necessary to construct and use the Initial Improvements for the Permitted Uses (as defined in Section 8.1, below), or other causes beyond Tenant's reasonable control (provided, however, that lack of money shall not be deemed such a cause) (collectively, "**Force Majeure**"), then the commencement of the Initial Improvements shall be excused for the period of delay and the Outside Construction Start Date shall be extended for an equivalent period.

3.2 Schedule of Performance. Subject to Force Majeure, the Initial Improvements shall be completed by Tenant within 12 months of the Outside Construction Start Date (as defined in Section 3.1 above) in accordance with the critical path time schedule of work attached hereto as Exhibit D (the "**Schedule of Performance**"). Upon written request, Tenant shall

submit to the Town of Acton on or before each deadline set forth in the Tenant's Schedule of Performance satisfactory evidence that each deadline has been met. To ensure that the purpose of Chapter 487 of the Acts of 2002 is fulfilled by the Tenant making an appropriate and timely affordable housing use of the Premises, the satisfaction of the matters set forth in the Tenant's Schedule of Performance by the dates set forth therefor is an essential part of this Lease. In the event that the Tenant's Schedule of Performance is materially delayed by factors beyond the Tenant's reasonable control (such as a third-party appeal of a necessary governmental permit or approval for the construction), Tenant shall immediately notify the Town of Acton of that delay and submit a proposed Amended Schedule of Performance taking into account said delay; and the Town of Acton shall not unreasonably withhold an extension to account for said delay. In the event that the Town of Acton grants an extension of any such date for any other reason, which the Town of Acton may grant or withhold in its reasonable discretion, the Town of Acton shall not be deemed thereby to be waiving any other rights hereunder or implying the extension of any other dates.

3.3 Delivery of Final Plans. On or before the date specified in the Schedule of Performance, Tenant shall submit to the Town of Acton Tenant's proposed construction drawings for the Initial Improvements. The Town of Acton may comment in writing upon Tenant's proposed construction drawings for the Initial Improvements to ensure that Tenant completes any initial improvements in a manner consistent with the public interest in the proper maintenance of the premises and with applicable health, safety and welfare regulations. The Tenant's construction drawings shall be reasonably consistent with the conceptual plans submitted as part of the Tenant's RFP Response and with the Schematic Design Plans. In the event the Town of Acton so comments in writing of any item in the proposed construction drawings, Tenant shall in its Judgment cause such item to be appropriately revised as soon as possible after receipt of the Town's notice and resubmit the same to the Town of Acton pursuant to this Section 3.3. The Town of Acton and Tenant agree to cooperate reasonably and in good faith with each other to resolve any requested modifications by the other with respect to the proposed construction drawings. Once the construction drawings have been finalized by the Tenant pursuant to the provisions set forth in Section 3.1, the Tenant shall submit to the Town of Acton a complete set of the final construction drawings resulting from this process (the "Final Plans").

3.4 Required Permits.

(a) Tenant shall obtain all permits, approvals and licenses from governmental authorities ("**Required Permits**") required for construction and use of the Initial Improvements, and for any other alterations, removals, installations, additions, changes, replacements or improvements to the Premises (collectively with the Initial Improvements, "**Tenant Work**"), and shall, upon written request, provide the Town of Acton with a copy of each. Upon full or partial completion of the Initial Improvements and prior to occupying any part of the Premises for any purpose other than performing the Initial Improvements, and upon completion of any other Tenant Work, Tenant shall obtain from each authority granting the Required Permits such evidence of approval ("**Required Approval**") as may be necessary to permit such part of the Premises to be used and occupied for the Permitted Uses (as defined in Section 8.1 below). Tenant may occupy all or part of the Premises under temporary or conditional certificates of occupancy, but shall not be relieved from the obligation of obtaining permanent certificates of

occupancy for the Initial Improvements or other similar licenses or permits required to permit the Premises to be used and occupied for the Permitted Uses.

(b) The Town of Acton, solely in its capacity as owner of the Premises and without cost to it, promptly shall execute and deliver any reasonable documents which may be necessary to obtain or maintain any Required Permit or Required Approval including, but not limited to, appeals of adverse decisions relating thereto and, solely in its capacity as owner of the Premises and without cost to it, shall further cooperate with Tenant in obtaining or maintaining any Required Permit or Required Approval, including, but not limited to, appeals of adverse decisions relating thereto as Tenant may from time to time reasonably request; *provided, however*, that with the exception of zoning or other matters, where the Town of Acton's execution of petitions, application, appeals or other documents or joinder in proceedings may be required as a condition to Tenant's proposed action, the Town of Acton shall in no event be required to join in or become a party to any proceeding in which it will oppose the Commonwealth of Massachusetts or any agency, authority, branch, division, office or subdivision of or for the Commonwealth of Massachusetts, nor shall the Town of Acton be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Town of Acton nor to take a position inconsistent with a position previously taken and made public by the Town of Acton. As stated in the RFP, the Town of Acton's Board of Selectmen will consider, reasonably and in good faith, any request by the Tenant to support the Tenant's filing of a Comprehensive Permit under M.G.L. Chapter 40B if required for the completion of the Initial Improvements and operation of the Premises for the Permitted Use, and will support that request for an appropriate Comprehensive Permit consistent with and to effectuate the purpose of this Lease Agreement. Tenant understands and agrees that the Board of Appeals of the Town of Acton is a quasi-judicial decision-making body and that the Town of Acton makes no representation or assurance as to how the Board of Appeals may act on or condition any such Comprehensive Permit.

(c) Tenant may contest, in good faith and on the same terms and conditions as provided in Section 8.4, the validity or applicability of any Legal Requirement (as defined in Section 8.3 below) which is the basis for any Required Permit or Required Approval.

3.5 General Contractor; Development Team. The Tenant shall provide to the Town of Acton a list including the names of each member of Tenant's development team, including without limitation Tenant's general contractor, architect and landscape architect for the design and construction of the Initial Improvements consistent with the Tenant's response to the RFP. No member of Tenant's development team shall, for any purpose related to the Tenant's Initial Improvements, be considered to be a contractor or subcontractor to the Town of Acton with respect to the Tenant's Initial Improvements. Each such member of Tenant's development team shall be under contract with and under the supervision of the Tenant.

3.6 Ownership. During the Term, the Initial Improvements shall be vested in Tenant, and Tenant shall be entitled to any depreciation deductions and investment tax credits thereon for income tax purposes. Upon the expiration or earlier termination of this Lease, Tenant may remove all such improvements made by the Tenant to the Premises and shall thereupon restore the Premises to the condition as of the commencement of the work on the Initial Improvements, reasonable wear and tear excepted. In the event the Tenant fails to complete such removal and

restoration within 90 days after the expiration or earlier termination of this Lease, title to the Improvements shall immediately vest in the Town of Acton and shall be surrendered at that time in accordance with Section 15.1 below.

3.7 Reproducible Drawings. Within ninety (90) days after Final Completion of the Initial Improvements or any other Tenant Work affecting the exterior of the Premises, Tenant shall prepare at its expense and deliver to the Town of Acton one complete, legible and reproducible full-sized set of as-built plans showing the Initial Improvements or such Tenant Work, as the case may be, together with a certified survey plan.

3.8 Manner of Construction; Cost of Initial Improvements. Tenant shall construct all Tenant Work in a good and workmanlike manner, in compliance with Legal Requirements and good engineering and construction practices. The Initial Improvements shall be constructed in material compliance with the Final Plans and in strict compliance with the Required Permits. Tenant shall take all reasonably necessary measures to (i) minimize dust, noise and construction traffic, (ii) minimize any damage, disruption or inconvenience caused by Tenant Work, and (iii) make adequate provision for the safety and convenience of all persons affected thereby and to properly police same. Dust, noise and other effects of such work shall be controlled using commercially accepted methods customarily utilized in order to control deleterious effects associated with construction projects in a populated or developed area. Tenant shall pay (or cause to be paid) all costs and expenses associated with any Tenant Work (including, without limitation, all architectural, engineering, construction, legal and consultant fees and costs) and shall defend, indemnify and hold the Town of Acton Parties (as defined in Section 7.13 below) harmless from and against any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) (collectively, "Claims") attributable to the performance of any Tenant Work.

3.9 Tenant's Responsibility to Discharge Liens.

(a) If any mechanic's, laborer's or materialman's lien shall at any time during the Term be filed against the Premises, the underlying fee, or any part thereof with respect to the performance of any labor or the furnishing of any materials to, by or for Tenant or anyone claiming by, through or under Tenant, Tenant, within thirty (30) days after notice of the filing thereof, shall take all commercially reasonable efforts to cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within a commercially reasonable time not to exceed sixty (60) days, then, in addition to any other right or remedy, the Town of Acton may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by the Town of Acton and all costs and expenses incurred by the Town of Acton in connection therewith, together with interest at the prime rate of interest reported from time to time in the Wall Street Journal or any successor publication plus two percentage points (the "Default Rate") from the respective dates of the Town of Acton's making of the payment or incurring of the cost and expense until paid in full, shall constitute Additional Rent (as defined in Section 4.1 below) under this Lease and shall be paid by Tenant to the Town of Acton on demand.

(b) Notwithstanding the foregoing, Tenant may contest, in good faith by appropriate proceedings, at Tenant's sole expense, the amount or validity in whole or in part of any mechanic's, laborer's or materialman's lien, and may defer the discharge of record thereof, provided that:

(i) Tenant shall provide the Town of Acton with security reasonably satisfactory to the Town of Acton or shall bond over to assure payment of contested items;

(ii) Tenant shall immediately pay or shall bond over such contested item or items if the protection of the Premises or of the Town of Acton's interest therein from any lien or claim shall, in the reasonable judgment of the Town of Acton, require such payment;

(iii) The Town of Acton shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of the Town of Acton. The Town of Acton shall not be subjected to any liability for the payment of any loss, costs or expenses in connection with any such proceedings, and Tenant shall defend, indemnify and save the Town of Acton Parties (as defined in Section 7.13 below) harmless from and against any such loss, costs and expenses; and

(iv) Notwithstanding the provisions of Subsection (iii) above, the Town of Acton shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Commonwealth of Massachusetts or any agency, authority, branch, division, office or subdivision of the Commonwealth of Massachusetts, nor shall the Town of Acton be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Town of Acton nor to take any position inconsistent with a position previously taken and made public by the Town of Acton.

Subject to the foregoing, and without cost to it, the Town of Acton shall promptly execute and deliver any reasonable documents which may be necessary to permit Tenant so to contest any such lien and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

3.10 No Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent to payment or request of the Town of Acton, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof.

3.11 No Agency Relationship. Based on (a) the provisions of Chapter 487 of the Acts of 2002, (b) the provisions of the Uniform Procurements Act for the disposition by Lease of Town-owned property, (c) guidance afforded by the Attorney General's office with respect to considerations for determining whether bidding laws for public construction apply to a long-term municipal lease that contemplates the construction of affordable housing by a private developer on public land, (d) guidance issued by the Chief Counsel of the Department of Housing and Community Development with respect to that same issue, and (e) interpretations of the purpose, intent, and scope of the bidding laws for public construction by Massachusetts

Courts and by the Attorney General's Business and Labor Protection Bureau, the Town of Acton and the Tenant separately expect and intend (without any warranty or representation by the other party with respect thereto) that this Lease, including without limitation its provisions applicable to the Tenant's Work on the Initial Improvements under Article 3, is not subject to bidding laws for public construction, including without limitation G.L. c. 149, §§ 44A-44J, G.L. c. 30, § 39M et seq., and G.L. c. 7, § 38K. In the event that a Court of competent jurisdiction issues a final, binding, conclusive Judgment that such bidding laws for public construction do apply to Tenant's work under Article 3 or other aspects of this Lease, then the Town of Acton and the Tenant shall use best efforts to enter into a further written agreement within sixty (60) days from the entry of that Judgment as to how said bidding laws for public construction shall be complied with in conformity with said Judgment. In the event that, despite their best efforts, the parties fail to reach such an agreement within said sixty (60) days (or such additional time as they may agree), then the Town of Acton or Tenant may terminate this lease by written notice to the other within thirty days thereafter.

ARTICLE 4

RENT

4.1 Rent.

(a) Commencing on the Commencement Date and continuing thereafter throughout the Term, Tenant shall pay to the Town of Acton (i) an initial rent payment of twenty-seven thousand five hundred dollars (\$27,500) and (ii) thereafter for the remaining Term annual base rent ("**Base Rent**") in the amount of three thousand dollars (\$3,000) on each anniversary of the first day of the first full calendar month following the Commencement Date. From and after the second anniversary of the first day of the first full calendar month following the Commencement Date, Base Rent shall be increased by 2.5% annually.

(b) In addition, Tenant shall pay any fee, charge or other amount required to be paid by Tenant to the Town of Acton under this Lease as additional rent ("**Additional Rent**"). Base Rent and Additional Rent (collectively, "**Rent**") shall be paid without counterclaim, notice, demand, abatement or offset at the Town of Acton's address set out in Section 18.2. It is the intention of the parties that the Rent payable hereunder shall be net to Landlord.

4.2 Late Payments. Any payment of Rent due hereunder not paid when due shall bear interest for each month or fraction thereof from the due date until paid in full at the Default Rate.

4.3 Payments by Tenant. All costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Premises and the construction, ownership, leasing, operation, maintenance, repair, replacement, rebuilding, use or occupation of the Premises or with respect to any interest of the Town of Acton in the Premises or this Lease shall be the responsibility of Tenant.

4.4 Rent to be Absolutely Net. It is the express understanding and agreement of the Town of Acton and Tenant that the Base Rent due and payable hereunder shall be absolutely net to the Town of Acton, so that this Lease shall yield to the Town of Acton the Base Rent specified

above during the Lease Term, and that all expenses of every kind and nature whatsoever, whether ordinary or capital in nature, relating to the construction, ownership, leasing, operation, maintenance, repair, replacement, rebuilding, use and occupation of the Premises, during the Term of the Lease shall be paid by Tenant (including, but not limited to, Impositions, as defined in Section 5.1 below), without cost or obligation of any type to the Town of Acton whatsoever.

ARTICLE 5

TAXES AND UTILITIES

5.1 Impositions. Tenant shall pay or cause to be paid as Additional Rent, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, special use or assessment district taxes, water and sewer charges, excises, levies, license and permit fees and all other governmental charges of any kind and nature which during the Term may be assessed, levied, imposed upon or become due with respect to, or become a lien on the Premises or the leasehold, or any part thereof, or any appurtenance thereto, and payments in lieu of such taxes, assessments, charges or fees, whether such charges are made directly to Tenant or through or in the name of the Town of Acton. All such charges shall be referred to herein as "Impositions." Tenant shall have the right to contest or object to the amount or validity of any Imposition but shall not withhold payment of any Imposition while any such contest or objection is pending. Tenant, upon request of the Town of Acton, shall furnish to the Town of Acton within thirty (30) days of the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to the Town of Acton, evidencing payment thereof.

5.2 Personal Property Taxes. Tenant shall pay promptly when due all taxes which may be imposed upon personal property (including fixtures taxed as personal property) in, on or within the Premises directly to the assessing party.

5.3 Utilities.

(a) Tenant shall pay, or shall cause to be paid, directly to the utility provider, all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, and service inspections made therefore, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of the Town of Acton ("Utility Charges").

(b) The Town of Acton agrees to provide reasonable access licenses or easements over the Premises to utility companies for the purposes of bringing and connecting utility service to the Premises.

5.4 No Liability of the Town of Acton. The Town of Acton shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam, heat, gas, hot water, electricity, light and power. The Town of Acton makes no representation or warranty that existing sources of supply, distribution points or

utilities are adequate or sufficient to supply the Improvements except that the Town of Acton does warrant that water provided by the Acton Water District and sewer through the Town's sewer system are available as of the execution of the Lease Agreement to supply the Improvements.

ARTICLE 6

REPAIRS AND MAINTENANCE; ALTERATIONS

6.1 Repair and Maintenance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall keep the Premises (including all Improvements), all roadways, sidewalks, curbs, landscaped areas, fences and entranceways adjoining the same in good order, condition and repair (except for reasonable wear and tear and damage from a Taking (as defined in Section 11.1 below) or from fire or other casualty after the last repair, replacement, restoration or renewal required to be made by Tenant pursuant to its obligations hereunder), and shall make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen in order to keep the Premises in safe, clean and sanitary condition throughout the Term. Without limiting the generality of the foregoing, Tenant shall keep the residential rental units in the Premises in such order, condition and repair as to meet the housing quality standards set forth in the United States Department of Housing and Urban Development's ("HUD") regulations at 24 C.F.R. §982.401, any higher standards required by Massachusetts law and the requirements of Massachusetts law and HUD (including 24 C.F.R. §982.401(j) and 24 C.F.R. Part 35) with respect to lead-based paint. All repairs will be in quality and class, as elected by Tenant, either equal to the original work or installations, or otherwise consistent with the standard then applicable to mixed-income residential apartment projects within the geographical area of the Premises at such time. Without limitation, Tenant shall keep the common driveway and sidewalks shown on **Exhibit B** in good order and condition and shall be responsible for removing ice and snow therefrom. Tenant shall keep the Premises free of accumulations of dirt and rubbish, and shall use all reasonable precautions to prevent waste, damage or injury to the Premises.

6.2 No Obligation of the Town of Acton. Except as otherwise expressly provided herein, the Town of Acton shall in no event be required to maintain or repair or to make any alterations, restoration, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

6.3 Alterations. Tenant may from time to time during the term of this Lease make, at its sole cost and expense, alterations or additions to the Improvements, subject, however, in all cases to the following, which Tenant covenants to observe and perform:

(a) no alteration or addition shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations of any federal, state or municipal government or departments or subdivisions of any of them having jurisdiction. The Town of Acton shall join in the application for such permits or authorizations whenever such action is necessary, provided, however, that the Town of Acton shall incur no liability or expense in connection therewith;

(b) to ensure that Tenant undertakes and completes any such Improvements in a manner consistent with the public interest in the proper maintenance of the Building and the Property and with applicable health, safety and welfare regulations. (i) any alteration to the roof, the structural weight-bearing walls or columns or to any weight-bearing floor slab of the Building, or any addition to the Building, (ii) any material alteration to the base-building plumbing, electrical, mechanical or HVAC systems serving the Premises, and (iii) any other alteration or addition costing more than [\$100,000.00] in 2005 dollars in the aggregate, (x) shall not be performed without Tenant first having received the Town of Acton's written consent thereto, (y) shall be conducted under the supervision of a licensed architect or licensed professional engineer and (z) shall be conducted in accordance with plans and specifications submitted to and approved by the Town of Acton. The Town of Acton shall not unreasonably withhold its consent to any alterations or additions proposed by Tenant or to any plans and specifications submitted to the Town of Acton in connection therewith. (Repair of damage or destruction occasioned by fire or other casualty shall be in accordance with Article 10 of this Agreement.) The Town of Acton's failure to respond to Tenant's request for consent to alterations or additions or for approval of plans and specifications for any alterations or additions consented to by the Town of Acton, or as to which the Town of Acton's consent is simultaneously being requested, within forty-five (45) days of the Town of Acton's receipt of such request(s) shall constitute the Town of Acton's approval of same, provided Tenant's request for such consent or approval states in bold capital letters that the Town of Acton's failure to respond within forty-five (45) days shall constitute its consent or approval, as the case may be. Tenant hereby agrees to reimburse the Town of Acton (in its capacity as owner of the Premises), upon demand therefore, as Additional Rent, for all costs incurred by the Town of Acton in reviewing the plans and specifications for, and consulting with respect to the carrying out of construction of any such alterations or additions. Provided, however that Tenant shall not be responsible for any such costs normally incurred by the Town of Acton (as a regulatory authority) in conjunction with the review and inspection of any such alterations or additions for which building permit fees or other applicable fees have been paid by Tenant. (Any reference in this Lease to 2005 dollars shall mean 2005 dollars as reflected in the Consumer Price Index for "All Cities" closest in date before December 31, 2005, published by the federal government, and reference shall be made to the Consumer Price Index for All Cities then in effect when adjustments to 2005 figures are made.);

(c) Any alteration or addition shall, when completed, be of such a character as not to reduce the structural integrity, value or usefulness of the Premises for the Permitted Use below its value and usefulness immediately before such change or alteration;

(d) Any change, construction, alteration or addition shall be made promptly in a good and workmanlike manner and in accordance with all Required Permits, Required Approvals and Legal Requirements, any national or local board of fire underwriters, or any other body hereafter exercising functions similar to those of any of the foregoing;

(e) During the period of construction of any change, construction, alteration or addition, in, to or of the Improvements, Tenant shall maintain or cause to be maintained the following insurance:

(i) Property and any other applicable insurance required in Article 7 hereof titled Insurance and Indemnity, with respect to any such change, demolition, construction, alteration or addition, including all materials and equipment therefore incorporated therein under a broad form all risk builders' risk completed value form or equivalent thereof, which insurance may be provided (by endorsement or otherwise) under the property and other casualty insurance required under Article 7 hereof titled Insurance and Indemnity; and

(ii) Workers' compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Town of Acton, Tenant or the Premises, with statutory limits as then required under the laws of The Commonwealth of Massachusetts;

(f) Tenant hereby agrees to hold the Town of Acton harmless from any and all liabilities of every kind and description which may arise out of or be connected in any way with such change, construction, alteration or addition, and to pay or discharge promptly any contractor's, mechanic's or materialman's lien other than notices of contract for work incurred in connection with activities permitted under this Lease and not yet due and payable, which may be recorded against the Premises, subject, however, to Tenant's right to bond over any such lien or provide other security acceptable to the Town of Acton during any period Tenant may be contesting any such lien, as more particularly provided in Section 3.9 hereof.

ARTICLE 7

INSURANCE AND INDEMNITY

7.1 Casualty Insurance. During the Term, Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Improvements and other property installed or used in, on or about the Premises in amounts sufficient at all times to prevent the Town of Acton or Tenant from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof (exclusive of cost of excavations, foundations and footings) without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an "All Risks Insurance Policy" and extended to include coverage against earth movement, back-up of sewers and drains, sprinkler leakage, breakdown of boilers, machinery and electrical equipment, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and demolition. Such insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount endorsement satisfactory to the Town of Acton.

7.2 Builder's Risk. During the period of any construction or structural alteration of the Premises or the Improvements, Tenant shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance (subject to any exclusions that are in effect after compliance with the terms hereof) against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as the Town of Acton (or any Permitted Institutional Mortgagee (as defined in Section 13.3 below) subsequently holding a first mortgage lien on the property) may reasonably require.

7.3 Liability Insurance. Throughout the Term, Tenant shall maintain, for the benefit of the Town of Acton and Tenant, and identifying the Town of Acton and Tenant as additional insureds, commercial general liability insurance against claims for personal injury, death, and property damage occurring upon, in or about the Premises or the Improvements, and on, in or about the adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least Three Million Dollars (\$3,000,000.00) combined single limit, including bodily injury and death, contractual liability, and for property damage (of which at least Two Million Dollars (\$2,000,000) shall be primary coverage and the remainder shall be primary or umbrella coverage). If Tenant has other locations that it owns or leases, the policy shall include an aggregate limit per location endorsement. Such liability insurance shall be primary and not contributing to any insurance available to the Town of Acton, and the Town of Acton's insurance shall be in excess thereto. The amount of this liability insurance may be adjusted in the Town of Acton's discretion to take into account any umbrella insurance policy that supplements the underlying commercial general liability coverage so long as the total liability insurance coverage is equal to or greater than the coverage that is required under this Section 7.3.

7.4 Boiler Insurance. Throughout the Term, the Tenant shall maintain boiler insurance, including pressure vessels and pipes, if there be any such vessel or pipes on the Premises, in an amount not less than One Million Dollars (\$1,000,000.00).

7.5 Personal Property Insurance. Throughout the Term, Tenant shall maintain personal property insurance insuring all equipment, trade fixtures, inventory, fixtures and personal property located on or in the Premises for perils covered by the cause of loss ("special form"). Such insurance shall be written on a replacement cost basis in an amount equal to no less than eighty percent (80%) of the full insurable replacement value of the aggregate of the foregoing.

7.6 Insurance Carried by Contractors. During the construction of the Initial Improvements, Tenant shall also require the construction manager and/or general contractor for the Initial Improvements to maintain (i) for the benefit of Tenant and the Town of Acton, as additional insureds, commercial general liability insurance, including products and completed operations coverage, against any claims for personal injury, death and property damage occurring upon, in or about the Premises and on, in and about the adjoining sidewalks and passageways during the construction of the Initial Improvements for at least One Million Dollars (\$1,000,000.00) combined single limit; (ii) worker's compensation in amounts required by state statute; (iii) employer's liability insurance with limits of not less than Five Hundred Thousand Dollars (\$500,000.00); and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or non-owned, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit.

7.7 Insurance Coverage Increases. The minimum coverage stated in this Article 7 shall be reviewed every five (5) years by the Town of Acton and Tenant, and shall be increased at such intervals if such increases are reasonably necessary to reflect inflation or changes in the nature or degree of risks insured or to protect against judgments from time to time being awarded in Massachusetts for injury, death and property damage.

7.8 Insurance Carriers, Policies. All insurance provided for in this Article 7 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility that are permitted to and are doing business in Massachusetts and having a so-called Best's Rating of "A:X" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to the Town of Acton. Any deductible amounts under any insurance policies required hereunder shall not exceed Five Thousand Dollars (\$5,000.00). Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates from time to time of the policies required pursuant to this Article 7, binders of such insurance or, upon written request of the Town of Acton, duplicate originals of the policies, shall be delivered by Tenant to the Town of Acton.

In addition, evidence of the payment of all premiums of such policies will be delivered to the Town of Acton. All commercial general liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that the Town of Acton may carry. If Tenant fails to maintain such insurance, which failure continues for ten (10) days after the Town of Acton gives notice to Tenant of such failure, then the Town of Acton, at its election, may procure such insurance as may be necessary to comply with the above requirements (but shall not be obligated to procure same), and Tenant shall repay to the Town of Acton as Additional Rent the cost of such insurance.

7.9 Blanket Policy. Nothing in this Article 7 shall prevent Tenant from taking out insurance of the kind and in the amounts provided for under this Article 7 under a blanket insurance policy or policies covering other properties as well as the Premises, provided, however, that any such policy or policies of blanket insurance (i) shall specify therein, or in a written statement from the insurers under such policy or policies specifying, the amount of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by this Article 7, and (ii) such amounts so specified shall be sufficient to prevent any of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Premises, otherwise comply as to endorsements and coverage with the provisions of this Article 7.

7.10 No Separate Insurance. Tenant shall not take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 7 to be furnished by, or which may reasonably be required to be furnished by, Tenant unless the Town of Acton and Tenant are included therein as insureds, with loss payable as in this Lease provided. Tenant shall immediately notify the Town of Acton of the placing of any such separate insurance and shall cause the same to be delivered as in Section 7.8 hereof required.

7.11 Adjustment. All policies of insurance provided for in Article 7 hereof shall name the Town of Acton and Tenant as the insureds as their respective interests may appear. The loss, if any, under such policies shall be adjusted with the insurance companies by Tenant, and shall be payable to Tenant. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of any of the Tenant Parties (as defined in Section

7.13 below) shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

7.12 Non-cancellation. Each policy or binder issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice (or ten (10) days' prior written notice in the event of nonpayment) to the Town of Acton, Tenant and any Permitted Institutional Mortgagee (as defined in Section 13.3 below) named therein.

7.13 Indemnification.

(a) Tenant shall defend (with counsel selected by Tenant that is reasonably acceptable to the indemnified party), indemnify and save the Town of Acton Parties (as defined below) harmless against and from any and all Claims which may be imposed upon or incurred by or asserted against the Town of Acton Parties by reason of any of the following occurrences:

(i) any work or thing done during the Term of this Lease in, on or about the Premises or any part thereof, including during construction of the Initial Improvements and any other Tenant Work, by Tenant or any other party other than the Town of Acton, their employees, contractors, agents, servants, or licensees (collectively with the Town of Acton, the "**Town of Acton Parties**");

(ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, during the Term of this Lease by Tenant or any other party other than the Town of Acton Parties;

(iii) any negligence or willful misconduct on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees (together with Tenant, the "**Tenant Parties**");

(iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, unless the same occurs solely as a result of the gross negligence or wrongful act of any of the Town of Acton Parties; and

(v) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

(b) If the Town of Acton obtains separate counsel due to the requirements of M.G.L. C. 268A or due to reasonable concerns that its interests and that of Tenant may be adverse or that counsel provided by Tenant may have a conflict in interest or is not providing effective representation of the Town of Acton, then the reasonable expenses of such separate counsel shall be at Tenant's expense.

(c) The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Town of Acton which

would exist at common law or under any other provision of this Lease, and the extent of the obligation of indemnification shall not be limited by any provision of insurance undertaken in accordance with this Article 7. This Lease is made on the express condition that the Town of Acton shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Tenant or any of the Tenant Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, unless caused by the gross negligence or willful misconduct of the Town of Acton.

(d) The provisions of this Section 7.13 shall survive termination or expiration of this Lease.

ARTICLE 8

USE OF PREMISES

8.1 Permitted Uses. The Premises and Improvements shall be used exclusively for purposes of developing seventeen (17) residential units of mixed-income rental and affordable housing and uses which are ancillary thereto to be operated over the Term in conformity with the Affordability Commitments set forth in Article IX below (collectively, the “Permitted Uses”). After the execution of this Lease, the parties may only alter the number of residential units to be provided hereunder by mutual agreement.

8.2 Abandonment of Use. Subject to Force Majeure, except during the construction of the Initial Improvements, and thereafter during reasonable periods of repair, remodeling and/or restoration, Tenant covenants and agrees to continuously and uninterruptedly use the Premises for the Permitted Uses. If the Premises shall be abandoned, deserted, or vacated by the Tenant (such decision to abandon, desert or vacate or discontinue construction or operation of the facilities located on the Premises shall be referred to as a decision to “Discontinue Operations”), or if less than sixty percent (60%) of the residential rental units located on the Premises are leased and occupied in accordance with Section 8.1 for a period of one hundred eighty (180) consecutive days or for more than one hundred eighty (180) days in any calendar year for any reason, the Town of Acton shall have the right to terminate the Lease and recover exclusive possession of the Premises by written notice to Tenant. In the event the Town of Acton exercises its right to terminate the Lease under this Section 8.2, the Lease shall terminate as of the date that is sixty (60) days after the date of the Town of Acton’s notice to Tenant thereof, and Tenant’s liability with respect to the Lease shall terminate as of such date, unless within such sixty (60) day period, more than sixty percent (60%) of the residential rental units located on the Premises are leased and occupied in accordance with Section 8.1 (in which event such termination notice shall have no effect). (Damage or destruction occasioned by fire or other casualty shall be addressed in accordance with Article 10 of this Agreement.)

8.3 Legal Requirements. Throughout the Term of this Lease, Tenant, at its expense, shall promptly comply with and shall cause all Tenant Parties to promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, subsidizing agencies (defined as any one of the

following entities providing a subsidy for low or moderate income housing in the Premises under M.G.L. c. 40B and 760 CMR 31.01(1)(b) and/or any state or federal affordable housing subsidy program): the Massachusetts Department of Housing and Community Development, the Affordable Housing Trust Fund of MassHousing, MassDevelopment, Massachusetts Historical Commission, the United States Department of the Interior, Community Economic Development Assistance Corporation, Massachusetts Housing Partnership and Massachusetts Housing Investment Corp.), housing authorities, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks and curbs adjoining the same, or to the use or manner of use of the same or to any of the Tenant Parties, whether or not such law, ordinance, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Uses, or shall affect the interior or exterior of the Improvements or any Tenant Work, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises (collectively, "**Legal Requirements**"). Tenant shall, in the event of any violation or any attempted violation of this Section by any Tenant Party, take steps, immediately upon knowledge of such violation, as Tenant determines to be reasonably necessary to remedy or prevent the same as the case may be.

8.4 **Contests.** Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to the Town of Acton, the validity or application of any Legal Requirement, subject to Tenant providing the Town of Acton with written notice thereof on or before the date of contesting same, and further subject to the following:

(a) by the terms of any such Legal Requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or the Town of Acton to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject the Town of Acton to criminal liability or fine, and provided that Tenant (i) bonds over such lien or furnishes to the Town of Acton security, reasonably satisfactory to the Town of Acton, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence; and

(c) The Town of Acton shall not be required to join in or become a party, nominal or otherwise, to any proceeding in which it will oppose the Commonwealth of Massachusetts or any agency, authority, branch, division, office or subdivision of the Commonwealth of Massachusetts, nor shall the Town of Acton be required in connection with any such proceeding or otherwise to oppose in any way any policy previously established by the Town of Acton nor to take a position inconsistent with a position previously taken and made public by the Town of Acton.

8.5 **Compliance with Insurance Requirements.** Throughout the Term of this Lease, Tenant, at its expense, shall observe and comply with the requirements of all policies of public

liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises, and Tenant shall, without limiting any other requirements of this Lease, in the event of any violation or any attempted violation of the provisions of this Section by any Tenant Party, take all reasonable steps, immediately upon knowledge of such violation or attempted violation, to remedy or prevent the same as the case may be.

8.6 Property Management. Tenant will either manage the Premises personally or hire a reputable and experienced property management company to manage the Premises in accordance with legally applicable guidelines (if any) in effect from time to time with respect to the management of affordable rental housing in the Town of Acton. If Tenant will not personally manage the Premises, prior to the Final Completion Date, Tenant shall submit to the Town of Acton (a) the name of Tenant's proposed property management company, (b) evidence that such company has (i) a good business and character reputation in the community, and (ii) proven property management experience with affordable housing developments, and (c) the identity, background and experience of the senior operational officer, and all agents and employees who will be engaged in the management of the Premises.

ARTICLE 9

RESIDENT SELECTION; AFFORDABILITY COMMITMENTS

9.1 Resident Selection. Prior to selecting residents (each, along with their families, a "**Resident**" or Household; Household being further defined in Section 9.2 below) of the residential rental units, Tenant shall submit to the Town of Acton for approval initial resident selection policies and criteria for the affordable housing rental facility, which approval shall not be unreasonably withheld, conditioned or delayed (the resident selection policies and criteria approved by the Town of Acton are hereinafter referred to as the "**Resident Selection Criteria**"). Tenant shall promptly adopt the Resident Selection Criteria. The Resident Selection Criteria shall comply with the following requirements:

- (a) Provide for a preference for residents of the Town of Acton for at least 70% of the affordable housing units, to the extent allowed by Legal Requirements;
- (b) Be consistent with the Affordability Commitments (as defined in Section 9.3 below);
- (c) Provide for (i) the selection of Households from a written waiting list in the chronological order of their application, insofar as practicable and (ii) the prompt written notification to any rejected applicant of the grounds for any rejection, to the extent allowed by Legal Requirements;

Utilize a fair and impartial selection procedure for potential Residents based on the Resident Selection Criteria, which shall be made available to such potential Residents upon request. The Tenant shall not discriminate against potential Residents on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use and occupancy of the rental unit or in connection with the

employment or application for employment of persons for the operation and management of the Premises. In addition, the Tenant shall not discriminate against, or refuse to lease, rent or otherwise make available a rental unit to a holder of a certificate of family participation under the Federal Rental Certificate Program (24 CFR Part 882) or a rental voucher under the Federal Rental Voucher Program (24 CFR Part 887) or to a holder of a comparable document evidencing participation in HUD's Home Investment Partnership (the "**HOME Program**") tenant-based assistance program because of the status of the prospective Resident as a holder of such certificate of family participation, rental voucher or comparable HOME Program tenant-based assistance document.

9.2 Definitions. For purposes of this Article 9, "**the Section 8 Program**" means Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (and the federal regulations thereunder at 24 C.F.R. Part 800 et seq.); "**the Section 8 Regulations**" means regulations promulgated by HUD under Section 8 of the Housing Act of 1937; "**Household**" means one or more individuals occupying a rental unit and satisfying the standards adopted by HUD or any successor federal agency under the Section 8 Regulations; "**BMSA**" means the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area (the "Area") established from time to time by the U.S. Bureau of the Census; "**Fair Market**" means the value of any rental unit in an arms-length transaction with a disinterested tenant; "**Adjusted Income**" shall be as defined in the federal regulations at 24 C.F.R. §813.102 using assumptions provided by HUD; "**Aggregate Annual Household Income**" means the anticipated total income from all sources received by all current members of the Household aged eighteen (18) years or older, including all net income derived from assets for the twelve (12) month period following the effective date of certification of income, and including and excluding those certain types of income as set forth in, and as determined in accordance with federal regulations at 24 C.F.R. Part 813; "**Median Income**" means the median Household income for the BMSA set forth in or calculated pursuant to the Section 8 Regulations. If HUD discontinues publication of Median Income statistics, then the Town of Acton shall designate another method of determining Median Income.

9.3 Affordability Commitments. From and after the Final Completion Date until the expiration or earlier termination of the Term of this Lease, Tenant covenants to operate multifamily housing on the Premises in accordance with the affordability commitments (the "**Affordability Commitments**") set forth below; provided, however, that if these Affordability Commitments conflict with applicable requirements of the Internal Revenue Code or Rules or Regulation promulgated pursuant thereto or Legal Requirements, the Town of Acton and the Tenant agree to work in good faith to ensure that the Affordability Commitments are fulfilled to the maximum extent possible consistent therewith:

(a) No less than 40% of the residential rental units will be leased to Households with Aggregate Annual Income less than or equal to sixty percent (60%) of Median Income. (In the alternative, at the Tenant's option based on the requirements of its Subsidizing Agency as required for the Chapter 40B comprehensive permit, and upon written notice to the Town of Acton, no less than 20% of the residential rental units will be leased to Households with Aggregate Annual Income less than or equal to fifty percent (50%) of Median Income.) The monthly rent charged to any such Household occupying a rental unit shall not exceed the lesser of:

(i) The Fair Market Rent as established by HUD under regulations promulgated at 24 C.F.R. §888.11 for a comparable rental unit in the Area, less the monthly allowance for those utilities and services (excluding telephone), if any, to be paid directly by the Household occupying the rental unit; or

(ii) An amount equal to thirty percent (30%) of the monthly Adjusted Income of a Household whose gross income equals sixty percent (60%) (or such higher or lower percentage as may be established by subparagraph (a)) of the Median Income, adjusted for number of bedrooms in the rental unit. In determining the maximum monthly rent that may be charged for the rental unit under this clause (ii), the Tenant shall subtract from the above amount an allowance for utilities and services (excluding telephone), if any, to be paid directly by the Household occupying the rental unit.

(b) As a condition to occupancy of an affordable unit, each potential Resident shall be required to sign and deliver to Tenant an income certification using a form adopted for such use by Tenant and reasonably approved by the Town of Acton.

(c) Tenant shall ensure that all affordable housing units shall be of comparable quality to the other units in the Premises, and, to the greatest extent practicable, shall be dispersed evenly throughout the Premises. If the Improvements are comprised of more than one (1) building, each building shall have a proportionate share of affordable housing units.

9.4 Lease Form. Tenant shall not include in any lease for a rental unit any provisions which conflict with or violate Massachusetts or Federal law. Each lease for a rental unit shall be for a term of not less than one (1) year, unless otherwise mutually agreed to by and between Tenant and the Resident, and shall require the Resident to provide information required for the Tenant to meet its reporting requirements under this Lease. Tenant may not terminate the tenancy or refuse to renew the lease of Residents except (i) in the reasonable judgment of the Tenant for serious or repeated violation of the terms and conditions of the lease for the rental unit, (ii) for violations of applicable federal, state or local law, or (iii) for other good cause. Any termination or refusal to renew, excepting any notice to quit for nonpayment of rent, must be preceded by not less than thirty (30) days written notice by the Tenant served on the Resident, which notice shall specify the grounds for termination or refusal to renew. A notice to quit for nonpayment of rent must be preceded by not less than fourteen (14) days written notice by the Tenant served on the Resident.

9.5 Records and Annual Report. Tenant covenants and agrees to secure and maintain on file for inspection and copying by the Town of Acton such information, reports and certifications as the Town of Acton may reasonably require in writing in order to ensure that the Affordability Commitments are being complied with. Tenant further covenants and agrees to notify the Town of Acton in writing if Tenant discovers non-compliance with any restrictions hereunder. The Tenant represents, warrants and covenants that the determination of whether a Household meets the income requirements set forth herein shall be made by Tenant at the time of leasing or renting a rental unit and thereafter at least annually on the basis of the then current income of such Household. The Tenant shall maintain as part of its records copies of leases of the rental unit and all initial and annual income certifications by the Household occupying the rental unit. Within ninety (90) days after the end of each calendar year, the Tenant shall provide

to the Town of Acton an annual report, in a form previously approved by the Town of Acton, consisting of certifications regarding the size, the aggregate annual and monthly gross and Adjusted Income, head of Household characteristics, rent and rental assistance of the Households occupying the rental units (the "**Tenant's Annual Report**"). With respect to any Household that moved into a rental unit in the prior year, the Annual Report shall also include the foregoing certifications for such Household at the time of its initial occupancy of any rental unit. The Annual Report shall contain such supporting documentation as the Town of Acton shall reasonably require. In addition to the foregoing, the Tenant shall keep such additional records and prepare and submit to the Town of Acton such additional reports as the Town of Acton may deem necessary to ensure compliance with the requirements of this Lease and the HOME Program (if applicable).

9.6 **Rental Unit Standards.** The Tenant covenants, agrees and warrants that the residential rental units at all times shall be suitable for occupancy and in compliance with all local health, safety and building codes. The Town of Acton shall have the right to enter the Premises upon reasonable notice and at reasonable times to inspect the same and to verify compliance with the aforesaid codes.

9.7 **Public Safety Screening.** In light of the location of a public school in relative close proximity to the Premises, Tenant will use best efforts (to the extent that any such efforts are legally permissible) to ensure that the residential rental units are not occupied by individuals who have ever been convicted of sexual crimes or offenses. In conjunction therewith, Tenant will use best efforts (to the extent that any such efforts are legally permissible) to require each applicant for a lease for a residential rental unit to certify that he or she (or any member of the applicant's intended Household [as defined in Section 9.2 below]) has never been convicted of a sexual crime or offense. In addition, Tenant shall review all public records (to the extent legally permissible) to ascertain the truthfulness of any certification delivered by an applicant under this Section 9.7.

ARTICLE 10

DAMAGE OR DESTRUCTION

Tenant shall give prompt written notice to the Town of Acton after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Premises. If the whole or any part of the Premises be damaged or destroyed by any cause whatsoever, whether insured or uninsured, at any time during the Term of this Lease, Tenant will, irrespective of insurance proceeds, promptly commence to replace or repair the portion of the Premises that is damaged or destroyed, and complete such repair and/or restoration with due diligence and at its sole cost and expense, with such changes, alterations or modifications as are reasonably determined by Tenant so long as such changes, alterations or modifications (a) do not diminish the overall utility for the Permitted Uses, and (b) comply with the aesthetic requirements contained in the RFP. The parties recognize that such damage or destruction may require emergency replacement or repair. Tenant will be entitled to all insurance proceeds in order to effect such replacement, modifications or alterations. However, if (i) Tenant reasonably determines that replacement and repair of the Premises is not in furtherance of the Permitted Uses or that the continued operation of the Premises after such replacement and repair in substantially the same manner as conducted

prior to the damage or destruction will not be economic and feasible, and (ii) the damage to or destruction of the Premises was covered by such property insurance as may be required pursuant to Article 7 hereof or by insurance otherwise carried by Tenant, and (iii) upon the Town of Acton's request, Tenant demolishes any destroyed buildings and secures any damaged buildings, in each case to a safe condition reasonably satisfactory to the Town of Acton and in compliance with Legal Requirements, then Tenant may elect, within one hundred eighty (180) days after the date of such casualty, not to repair or replace the portion of the Premises damaged and may terminate this Lease by giving notice to the Town of Acton (the "Casualty Termination Notice"). After delivery of the Casualty Termination Notice to the Town of Acton, (i) Tenant will vacate the Premises as soon as reasonably possible; and (ii) assign to the Town of Acton all of its right, title and interest in and to any and all insurance proceeds related to such casualty. Tenant's obligations pursuant to Section 10.1(iii) shall survive the termination of the Lease.

ARTICLE 11

TAKING

11.1 Award. In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between the Town of Acton and Tenant and those authorized to exercise such right (any such matters being herein referred as a "Taking"), the Town of Acton and Tenant shall have the right to participate in any Taking proceedings or agreement for the purpose of protecting their interests hereunder. Each party so participating shall pay its own expenses therein.

11.2 Termination.

(a) If at any time during the Term of this Lease there shall be a Taking of the whole or substantially all of the Premises, this Lease shall terminate and expire on the earlier of (i) the date upon which the condemning authority takes possession of the real estate subject to the Taking; or (ii) the date title to the real estate is vested in the condemning authority. Rent hereunder shall be paid to the date of such Taking. For the purpose of this Article, "substantially all of the Premises" shall be deemed to have been taken if the untaken part of the Premises shall be insufficient for the restoration of the Improvements such as to allow the economic and feasible operation thereof by Tenant. Tenant's interest in any Taking award will equal the value to Tenant of the remaining Term of this Lease, the value to Tenant of the use and enjoyment of the Improvements minus the expected cost to remove the same, and Tenant's relocation expenses insofar as relocation expenses are paid by the Taking authority (collectively, the "Tenant's Share"). The Town of Acton's interest in any taking by Condemnation will equal the value of its fee interest plus the remaining interest in the Improvements (the "Town of Acton's Share"). All awards from the Taking will be divided between Tenant and the Town of Acton in the proportion that Tenant's Share bears to the Town of Acton's Share. Notwithstanding the foregoing, however, the Town of Acton shall not share in any Taking award with respect to the Improvements unless and until the unpaid balance of the Permitted Institutional Mortgage (as defined in Section 13.2 below) on the Premises, if any, is paid in full, all such Taking proceeds being used first to pay off and discharge such Permitted Institutional Mortgage.

(b) Tenant's Obligations Survive. No such termination of this Lease under this Article 11 shall release Tenant from any obligation hereunder for Rent accrued or payable for or during any period prior to the effective date of such termination, and any prepaid rent and insurance premiums beyond the effective date of such termination shall be adjusted.

11.3 Insubstantial Taking. If a portion of the Premises is taken and Section 11.2 does not apply, then this Lease will automatically terminate on the date of the Taking only as to the portion of the Premises Taken and this Lease will continue in full force and effect with respect to the remaining portion of the Premises with Base Rent proportionately reduced. In such event, any partial Taking award shall be paid first to the Tenant in an amount equal to the greater of (i) the unamortized cost of any Improvements constructed by Tenant on the portion of the Premises subject to the Taking; or (ii) the amount necessary to discharge or, if such amount is insufficient, to reduce any Permitted Institutional Mortgage. The balance, if any, of the Taking award shall be paid to the Town of Acton.

11.4 Temporary Taking. If the whole or any part of the Premises shall be the subject of a temporary Taking of ninety (90) days or less, this Lease shall remain in full force, including, without limitation, the Term hereof and Tenant's obligation to pay Rent hereunder, and Tenant shall be entitled to receive the entirety of any award so made for the period of the temporary Taking which is within the Term.

ARTICLE 12

ENVIRONMENTAL

12.1 Environmental Laws Defined. "**Environmental Laws**" means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time to time) pertaining to environmental regulations, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. ("**SARA**"); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. ("**TSCA**"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass. Gen. L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass. Gen. L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined in Section 12.4 below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage

tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

12.2 Tenant's Environmental Representations, Warranties and Covenants. Tenant hereby represents, warrants and covenants as follows:

(a) Except as may be permitted by and only in accordance with Environmental Laws, Tenant shall not allow any Hazardous Materials (as defined in Section 12.4 below) to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Tenant is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.

(b) No activity shall be undertaken on the Premises by Tenant which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

(c) Tenant shall, with all due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to the Town of Acton), take all actions (to the extent and at the time or from time to time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises including all removal, containment and remedial actions. Tenant shall pay or cause to be paid at no expense to the Town of Acton all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises.

(d) Tenant, upon execution of this Lease, shall furnish the Town of Acton with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which Tenant is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Tenant shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to the Town of Acton.

12.3 The Town of Acton's Environmental Representations, Warranties and Covenants. The Town of Acton hereby represents, warrants and covenants as follows:

(a) Except for Existing Contamination (hereinafter defined), neither the Town of Acton nor, to the Town of Acton's knowledge, the Premises (i) has received notice of any private or governmental lien or judicial or administrative notice, order or action relating to Hazardous Materials or environmental liabilities or violations with respect to the Premises, or (ii) is in, or with any applicable notice or lapse of time, or failure to take certain curative or remedial actions, will be in, either direct or indirect violation of any Environmental Laws. For purposes

hereof, "**Existing Contamination**" shall mean any and all pollution or contamination caused by any Hazardous Material that previously existed or exists in, or was released onto the Premises as of the Commencement Date, the types and quantities of which have been disclosed in the environmental assessment reports described in **Exhibit E**.

(b) No activity shall be undertaken on the Premises by the Town of Acton which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

12.4 **Hazardous Materials Defined.** For purposes of this Lease, "**Hazardous Materials**" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

12.5 **Notices.**

(a) Tenant shall provide the Town of Acton with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Tenant to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to the Town of Acton concurrently with mailing or delivery to the governmental agencies or authorities. Tenant also shall provide the Town of Acton with copies of any notices of responsibility or any other notices received by or on behalf of Tenant from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Tenant shall deliver to the Town of Acton any documentation or records as the Town of Acton may reasonably request and which are in Tenant's possession and may be lawfully delivered to the Town of Acton, and the Town of Acton shall deliver to Tenant any documentation or records as Tenant may reasonably request and which are in the Town of Acton's possession and may be lawfully delivered to Tenant.

(b) Tenant or the Town of Acton shall immediately notify the other party in writing should Tenant or the Town of Acton become aware of (iii) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject the Town of Acton, Tenant or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or

use of the Premises under any Environmental Laws; (iv) any lien filed, action taken or notice given of the nature described in Sections 12.2(b) or 12.3(b) above; (v) any notice given to Tenant from any occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (vi) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Premises.

12.6 Environmental Indemnity. Tenant hereby presently, unconditionally, irrevocably and absolutely agrees to pay, indemnify, defend with counsel acceptable to the Town of Acton and save harmless the Town of Acton Parties for, from and against any and all Claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of the Town of Acton Parties and arising from any violation or alleged violation of Environmental Laws, environmental problem or other environmental matter described herein, relating to the Premises occurring during the Lease Term (including any holdover or extension thereof), or as a consequence of any of Tenant's or the Town of Acton's interest in or operation of the Premises, including, without limitation, matters arising out of any breach of Tenant's covenants, representations and warranties occurring during the Lease Term (including any holdover or extension thereof). Tenant does further agree and covenant that except as otherwise set forth in this Lease, none of the Town of Acton Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by the Town of Acton on such property or as a result of any re-entry by the Town of Acton onto the Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive termination of this Lease. In addition, the covenants and indemnities of Tenant contained herein shall survive any exercise of any remedy by the Town of Acton under the Lease. Tenant agrees that the indemnification granted herein may be enforced by any of the Town of Acton Parties; provided, however, that nothing contained herein shall prevent the Town of Acton from exercising any other rights under the Lease.

12.7 Survival. The agreements, representations and warranties of the Town of Acton and Tenant respectively in this Article 12 shall survive the expiration or earlier termination of this Lease.

ARTICLE 13

TRANSFER OF TENANT'S INTEREST

13.1 Assignment by Tenant. Tenant will not assign, transfer or otherwise dispose of this Lease or any interest in this Lease or sublet or permit any other person (other than Permitted Sublessees as defined in Section 13.2 below) to occupy or use the Premises or any portion thereof without the prior written consent of the Town of Acton, which consent shall not be unreasonably withheld, delayed or conditioned, provided such assignee or transferee shall (i) have a good reputation in the community, (ii) use and operate the Premises for the Permitted

Uses, (iii) have substantial and successful experience in operating affordable rental housing facilities that are similar in size and nature to the Premises, and (iv) have a financial condition and creditworthiness reasonably adequate to enable such assignee or transferee to meet the obligation of the Tenant under this Lease for the remainder of the Term. The foregoing prohibition on transfers shall include any reorganization, dissolution or merger of Tenant or its general partner (if Tenant is a partnership) or managing member (if Tenant is a limited liability company), whether by operation of law or otherwise, the admission of any new general partner (if Tenant is a partnership) or managing member (if Tenant is a limited liability company), or the withdrawal of its current general partner (if Tenant is a partnership) or managing member (if Tenant is a limited liability company), a transfer of ten percent (10%) or more of the ownership interests in Tenant or its general partner (if Tenant is a partnership) or managing member (if Tenant is a limited liability company) or any similar transaction. The Town of Acton's consent to an assignment, transfer, disposition or subletting in any one instance will not waive the requirement of its consent to any subsequent assignment, transfer, disposition, or subletting.

13.2 Permitted Subletting. Tenant may enter into any sublease, license agreement or other agreement creating rights of occupancy for third parties in the residential rental units, in whole or in part ("Permitted Subleases" and each tenant thereunder, a "Permitted Sublessee"), provided that (a) the Permitted Subleases do not violate the Affordability Commitments, (b) the term of any Permitted Sublease shall end prior to the expiration of the Term, and (c) upon expiration of the Term or the earlier termination of this Lease as provided herein, all of Tenant's right, title and interest as lessor under any Permitted Subleases in effect on the date of such expiration or earlier termination shall automatically be assigned to the Town of Acton and the Town of Acton shall automatically be deemed, without the need for any instrument of transfer or assignment, to have assumed all of Tenant's obligations under such Permitted Subleases.

13.3 Leasehold Mortgages.

(a) Institutional Mortgages. Notwithstanding anything to the contrary contained in this Lease, Tenant may, upon prior written notice to the Town of Acton, from time to time, encumber, hypothecate or mortgage its interest in the Premises with one or more mortgages, assignments of leasehold interest or any other security instruments in favor of an institutional lender or lenders as partial security for a loan or loans (a "Permitted Institutional Mortgage" and the holder of such Permitted Institutional Mortgage, a "Permitted Institutional Mortgagee"). Each such Permitted Institutional Mortgage shall be expressly subject to the terms and conditions of this Lease. Tenant shall promptly deliver to the Town of Acton a true copy of the Permitted Institutional Mortgage and any assignment thereof. Tenant shall notify the Town of Acton of the address of the Permitted Institutional Mortgagee to which notices may be sent. The Town of Acton and Tenant hereby agree that there shall be no cancellation, surrender or any modification of this Lease that would adversely affect such Permitted Institutional Mortgagee's rights hereunder without the prior consent in writing of the Permitted Institutional Mortgagee.

(b) Permitted Institutional Mortgages not Assignment. For the purpose of this Article 13, the making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any Permitted Institutional Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Institutional Mortgagee, as such, to assume the performance of any of the

terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee (without requiring the consent of the Town of Acton pursuant to Section 13.1 above) and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, and shall execute a written instrument assuming Tenant's obligations hereunder promptly upon request by the Town of Acton.

(c) Permitted Institutional Mortgagee Cure Rights. In the event of any default in the payment of money, Permitted Institutional Mortgagee, without being under any obligation to do so, shall have the right to cure such monetary default within ninety (90) days after the giving of notice to it by the Town of Acton. In the case of any default by the Tenant other than in the payment of money hereunder, the Town of Acton will take no action pursuant to Article 14 hereunder by reason of any such default without first giving to the Permitted Institutional Mortgagee notice thereof simultaneously with notice given to Tenant, and the right, but not the obligation, for a period of one hundred twenty (120) days after notice of such Tenant default, to cure such default, or, if such default cannot reasonably be cured within such one hundred and twenty (120) days, such longer period as is required to cure such default, including such period of time as may reasonably be required for Permitted Institutional Mortgagee to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, provided, that the Permitted Institutional Mortgagee shall have commenced cure or appropriate measures to obtain possession of the Premises or title to the Tenant's leasehold estate created hereby, within such one hundred and twenty (120) day period and thereafter continues diligently to effect such cure, or obtain such possession or title. The Permitted Institutional Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant; provided, further, that nothing herein shall preclude the Town of Acton from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance, provided the exercise of such rights or remedies are subject to the same cure rights of the Permitted Institutional Mortgagee as set forth herein. Upon the expiration of any applicable cure period, the Town of Acton shall notify the Permitted Institutional Mortgagee whether or not Tenant has effectuated a cure within said cure period. The provisions of this Section 13.3(c) are conditioned on the following provisions:

(i) Acquisition of Possession. The Permitted Institutional Mortgagee shall, within sixty (60) days after notice of such Tenant non-monetary default, notify the Town of Acton of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the Permitted Institutional Mortgage or otherwise to obtain ownership of Tenant's interest in this Lease. Such notice from the Permitted Institutional Mortgagee shall be accompanied by an instrument in writing wherein such Permitted Institutional Mortgagee agrees that:

A during the period that such Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall

terminate or such proceeding shall be discontinued, it will pay or cause to be paid to the Town of Acton all sums from time to time becoming due hereunder during such period; and

B if delivery of possession of the Premises shall be made to such Permitted Institutional Mortgagee, whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, such Permitted Institutional Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements thereafter arising and herein contained on Tenant's part to be performed (including, but not limited to the Affordability Commitments and the payment of Rent and Additional Rent) except such covenants and agreements which cannot with the exercise of due diligence be performed by such Permitted Institutional Mortgagee. Nothing in this subclause (B) shall be construed to require such Permitted Institutional Mortgagee to perform any of the Tenant's obligations hereunder accruing after such Permitted Institutional Mortgagee ceases to be in possession.

(d) Additional Rights of Permitted Institutional Mortgagee and Town of Acton's Covenants. In addition to the matters set forth above, the Town of Acton agrees, for so long as a Permitted Institutional Mortgage is outstanding, as follows:

(i) Notwithstanding anything to the contrary contained in this Lease, in the event that the Town of Acton would otherwise have the right to terminate this Lease by reason of any Event of Default by Tenant which cannot be cured by a Permitted Institutional Mortgagee, (e.g., an Event of Default under Section 14.2(e) below), or if a Permitted Institutional Mortgagee, its successors or assigns shall acquire Tenant's interest in this Lease, the Town of Acton will enter into an amendment or other agreement naming the Permitted Institutional Mortgagee or its nominee as Tenant hereunder for the remainder of the Term effective as of the date of such termination, upon the same terms, provisions, covenants, and agreements as herein contained, provided the Permitted Institutional Mortgagee or its nominee shall make written request upon the Town of Acton for such amendment or other agreement within sixty (60) days after the later of (a) the date of such termination or acquisition, or (b) date of receipt of notice of the termination;

(ii) The Town of Acton and Tenant shall not (i) consent to any action taken or to be taken, the result of which would diminish or impair the priority of a Permitted Institutional Mortgage; or (ii) subordinate or consent to the subordination of this Lease to any subsequent, underlying lease or mortgage. If this Lease is rejected or disaffirmed by the Town of Acton or Tenant pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, the Town of Acton shall offer the Permitted Institutional Mortgagee a new lease upon the same terms and conditions within ten (10) days after the date of such rejection; and

(iii) The fee title to the Premises and the leasehold estate of Tenant therein shall not merge but shall remain separate and distinct notwithstanding the acquisition of said fee title by the Town of Acton, Tenant, or any third party by purchase or otherwise.

ARTICLE 14

TERMINATION AND DEFAULT

14.1 Events of Default. Each of the following events shall be deemed an “Event of Default” hereunder:

(a) If Tenant shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease, and such failure shall continue for a period of sixty (60) days after notice from the Town of Acton to Tenant;

(b) If Tenant shall fail to comply with the provisions of Section 8.2 hereof with respect to Permitted Uses of the Premises or Section 9.2 hereof with respect to Resident Selection and Affordability Commitments;

(c) If Tenant shall fail to maintain any insurance required to be maintained by Tenant hereunder;

(d) If Tenant shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Lease, other than those referred to in Subsections (a) - (c) of this Section 14.1, for a period of ninety (90) days after notice from the Town of Acton to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such ninety (90) day period, within such additional time reasonably necessary provided Tenant commences to cure the same within such 90-day period and thereafter prosecutes the curing of such default with diligence;

(e) If Tenant shall initiate the appointment of a receiver to take possession of all or any portion of the Premises or Tenant's leasehold estate for whatever reason, or Tenant shall make an assignment for the benefit of creditors, or Tenant shall initiate voluntary proceedings under any bankruptcy or insolvency law or law for the relief of debtors; or if there shall be initiated against Tenant any such proceedings which are not dismissed or stayed on appeal or otherwise within ninety (90) days, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated or stayed on appeal;

(f) If Tenant vacates or abandons the Premises for a period of more than forty-five (45) consecutive days; *provided, however*, that Tenant shall not be deemed to have vacated or abandoned the Premises with respect to any period during with all or portions of the Premises may be vacant as a result of or in connection with work being done to repair or restore the Premises in accordance with Article 11 hereof following a casualty or partial Taking or to renovate and improve the Premises, provided that in any such case Tenant shall prosecute such work to completion as diligently and promptly as practicable;

(g) If this Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged within one hundred twenty (120) days after its levy, or such further time as the Town of Acton may in its discretion allow in the event the Tenant is vigorously and in good faith contesting the attachment; and

(h) Tenant makes any assignment in violation of this Lease.

14.2 Remedies. Upon an Event of Default, the Town of Acton at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ninety (90) days after the giving of such notice. Upon the date specified in such notice, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate (unless prior to the date specified for termination the Event or Events of Default shall have been cured, in which case this Lease shall remain in full force and effect), and Tenant shall remain liable as hereinafter provided and all Improvements shall become the property of the Town of Acton without the necessity of any deed or conveyance from Tenant to the Town of Acton. Tenant agrees upon request of the Town of Acton to immediately execute and deliver to the Town of Acton any deeds, releases or other documents deemed necessary by the Town of Acton to evidence the vesting in the Town of Acton of the ownership of all Improvements. Upon such termination, the Town of Acton may re-enter the Premises and dispossess Tenant and anyone claiming by, through or under Tenant by summary proceedings or other lawful process.

14.3 Town of Acton's Right To Perform Tenant's Covenants.

(a) Upon an Event of Default, the Town of Acton may, but shall be under no obligation to, cure such default. The Town of Acton may enter upon the Premises (after five (5) days' written notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

(b) The Town of Acton shall not be liable for inconvenience, annoyance, disturbance or other damage to Tenant or any operator or occupant thereof by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment onto the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be affected thereby. The Town of Acton shall use commercially reasonable efforts to minimize interference with or disruption of Tenant or Tenant's business, occupants, operators and or lessees.

(c) All reasonable sums so paid by the Town of Acton and all reasonable costs and expenses incurred by the Town of Acton, including reasonable attorneys' fees and expenses, in connection with the performance of any such act, together with interest at the Default Rate from the date of such payment or incurrence by the Town of Acton of such cost and expense until the date paid in full, shall be paid by Tenant to the Town of Acton, as Additional Rent, on demand. If the Town of Acton shall exercise its rights under this Section 14.3 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and the Town of Acton shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such obligation to the Town of Acton upon demand. All costs incurred by the Town of Acton hereunder shall be presumed to be reasonable in the absence of a showing of bad faith, clear error, or fraud.

14.4 No Waiver. No failure by either the Town of Acton or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right

or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either the Town of Acton or Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by the Town of Acton or Tenant of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

14.5 Injunctive Relief. In the event of any breach or threatened breach by Tenant or the Town of Acton of any of the agreements, terms, covenants or conditions contained in this Lease, the Tenant or Town of Acton shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

14.6 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Town of Acton or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 15

SURRENDER; HOLD-OVER

15.1 Surrender.

(a) Tenant shall on the last day of the Term, or upon any earlier termination of this Lease, (i) quit and peacefully surrender and deliver up the Premises, to the possession and use of the Town of Acton without delay and in good order, condition and repair, (ii) remove its Improvements, and (iii) restore the Premises to their pre-existing condition in accordance with Section 3.6 above, reasonable wear and tear excepted, subject to the rights of a Permitted Institutional Mortgagee hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term, those permitted under this Lease or created or suffered by the Town of Acton and shall be surrendered without any payment by the Town of Acton on account of any Improvements which Tenant fails to remove in accordance with Section 3.6 hereof. Upon or at any time after the expiration or earlier termination of this Lease, the Town of Acton shall have, hold and enjoy the Premises and the right to receive all income from the same.

(b) Tenant shall remove from the Premises all personal property within thirty (30) days after the termination of this Lease and shall repair at Tenant's sole cost any damage to

the Premises caused by such removal, unless the Town of Acton permits such property to remain.

15.2 Holdover. If Tenant or any party claiming by, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then the Town of Acton may, at its option, serve written notice upon Tenant that such holding over constitutes (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Lease. Tenant shall also pay to the Town of Acton all damages sustained by the Town of Acton resulting from retention of possession by Tenant. The provisions of this Section 15.2 shall not constitute a waiver by the Town of Acton of any right of re-entry as set forth in this Lease; nor shall receipt of any Rent or any other act in apparent affirmation of the tenancy operate as a waiver of the Town of Acton's right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Tenant's part to be performed.

ARTICLE 16

ESTOPPEL CERTIFICATES

The Town of Acton and Tenant promptly shall execute and deliver to each other or to any Permitted Institutional Mortgagee, within fifteen (15) business days after request, a certificate as to matters customarily requested in connection with estoppel certificates, including, without limitation, whether or not (i) the Lease is in full force and effect, (ii) the Lease has been modified or amended in any respect and describing such modifications or amendments, if any, and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any. Any such certificate may be relied upon by the Town of Acton, Tenant, any Permitted Institutional Mortgagee, and any transferee or assignee of a Permitted Institutional Mortgagee.

ARTICLE 17

NON-DISCRIMINATION COVENANTS

17.1 Non-Discrimination. With respect to its exercise of all rights and privileges granted herein, Tenant agrees that Tenant, its successors in interest, sublessees, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, handicap, veteran status or any other basis prohibited by law in Tenant's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors.

17.2 Non-Compliance. Tenant shall defend, indemnify and hold the Town of Acton Parties harmless from and against any and all Claims of third persons resulting from Tenant's non-compliance with any of the provisions of this Article 17.

ARTICLE 18

MISCELLANEOUS

18.1 Amendments to Lease. This Lease may not be amended, modified, supplemented or extended except by a written instrument executed by the Town of Acton and Tenant.

18.2 Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers or other communications or documents required to be given, delivered or served, or which may be given, delivered or served, under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be delivered by hand, nationally recognized overnight express commercial service such as "Federal Express" (in either case with evidence of delivery or refusal thereof) or by registered or certified mail, return receipt requested, addressed if to Tenant to:

Karen Frederick, President
Common Ground Development Corporation
C/O Community Teamwork Inc.
167 Dutton Street
Lowell, MA 01852

with a copy to:

Attorney Douglas C. Deschenes
One Billerica Road
Chelmsford, MA 01824

or to such other address as Tenant may from time to time designate by written notice to the Town of Acton, or if to the Town of Acton addressed to:

with a copy to: Town Manager
Town Hall
427 Main Street
Acton, MA 01720

Town Clerk
Town Hall
427 Main Street
Acton, MA 01720

or to such other address as the Town of Acton may from time to time designate by written notice to Tenant, or to such other agent or agents as may be designated in writing by either party. The earlier of: (i) the date of delivery by overnight express commercial service, or (ii) the date of delivery or upon which delivery was refused as indicated on the registered or certified mail return receipt shall be deemed to be the date such notice or other submission was given.

18.3 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of

this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.4 WAIVER. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS OR ASSIGNS UNDER OR CONNECTED WITH THIS LEASE OR ANY OF ITS PROVISIONS, ANY NEGOTIATIONS IN CONNECTION THEREWITH, OR TENANT'S USE OR OCCUPATION OF THE PREMISES.

18.5 Quiet Enjoyment. Tenant, upon paying the Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under the Town of Acton, subject, however, to the exceptions, reservations and conditions of this Lease and matters of record. The foregoing shall not create any liability on the part of the Town of Acton for any defects in or encumbrances on the Town of Acton's title existing as of the date hereof.

18.6 Integration. All prior understandings and agreements between the parties with respect to this Lease are merged within this Lease, which alone fully and completely sets forth the understanding of the parties.

18.7 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of the Town of Acton, its successors and assigns, and Tenant, its successors and assigns.

18.8 Notice of Lease. The Town of Acton and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, which shall be recorded forthwith with the Middlesex County South District Registry of Deeds, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry of Deeds.

18.9 Enforcement of the Town of Acton's Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Tenant's equitable rights and remedies, the Town of Acton's liability under this Lease shall be enforceable only out of the Town of Acton's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, the Town of Acton, nor shall there be any personal liability on the part of the Town of Acton or any member of its board of directors, or any officer or employee of the Town of Acton, with respect to any obligations to be performed hereunder. Without limitation of the foregoing, the Town of Acton shall not be liable for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with (i) the supply or interruption of water, gas, electric current, oil or any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place. In no event shall the Town of Acton be liable to Tenant for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease.

18.10 No Merger. There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that the Town of Acton may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless the Town of Acton executes and records an instrument affirmatively electing otherwise.

18.11 Captions, Exhibits, Gender, Etc. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease. The exhibits to this Lease are incorporated into this Lease and are a part hereof. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

18.12 Table of Contents. The Table of Contents proceeding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

18.13 Massachusetts Law Governs. This Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

18.14 Time of the Essence. Time shall be of the essence hereof.

18.15 Excavation and Shoring. If any excavation shall be made or contemplated to be made by Tenant for building or other purposes upon property or streets adjacent to or nearby the Premises, Tenant shall do or cause to be done all such work as may be necessary to preserve any of the walls or structures of the Improvements from injury or damage and to support the same by proper foundations. All such work done by Tenant shall be at Tenant's sole cost and expense.

18.16 No Partnership or Joint Venture. Nothing contained under this Lease shall be construed to create a partnership or joint venture between the Town of Acton and Tenant or to make the Town of Acton an associate in any way of Tenant in the conduct of Tenant's business, nor shall the Town of Acton be liable for any debts incurred by Tenant in the conduct of Tenant's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

18.17 Tenant Request for Consent. Tenant shall reimburse the Town of Acton for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for the Town of Acton's consent hereunder, provided, however, that the Town of Acton shall provide Tenant with an estimate of said fees and/or expenses for Tenant's review and approval prior to incurring such costs.

18.18 Prevailing Party. In any litigation between the parties arising out of this Lease, or in connection with any other actions taken or notices delivered in relation to a default by any party to this Lease, the non-prevailing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the enforcement of the terms of this Lease.

18.19 Brokers. The Town of Acton and Tenant each warrants and represents to the other that it has had no dealings or negotiations with any broker or agent in connection with this Lease. Each agrees to pay, and shall hold the other harmless and indemnified from and against any and all costs, expenses (including without limitation counsel fees) or liability for any compensation, commissions and charges claimed by any broker or agent resulting from any such dealings by the indemnifying party with respect to this Lease or the negotiation therefore.

18.20 Covenants Running with the Land. Tenant intends, declares, and covenants, on behalf of itself and all future holders of Tenant's interest hereunder, that this Lease and the covenants and restrictions set forth in this Lease regulating and restricting the use, occupancy, and transfer of the Premises (a) shall be and are covenants running with the Premises, encumbering the Premises for the term of this Lease, binding upon Tenant and Tenant's successors-in-interest; (b) are not merely personal covenants of Tenant; and (c) the benefits shall inure to the Town of Acton.

18.21 Entire Agreement. This Lease, including all attached exhibits, contains the entire agreement between the Town of Acton and Tenant with respect to its subject matter. Except for those which are specifically set forth in this Lease, no representations, warranties or agreements have been made by the Town of Acton or Tenant to one another with respect to this Lease.

18.22 No Waiver. No waiver of any condition or agreement in this Lease by either the Town of Acton or Tenant will imply or constitute a further waiver by such party of the same or any other condition or agreement. No act or thing done by the Town of Acton or the Town of Acton's agents during the Term will be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender will be valid unless in writing signed by the Town of Acton. No payment by Tenant, nor receipt from the Town of Acton, of a lesser amount than the Rent, Additional Rent, or other charges or fees due as stipulated in this Lease will be deemed to be anything other than a payment on account of the same, and to the earliest due of the same. No endorsement or statement on any check, or any letter accompanying any check or payment as Rent, will be deemed an accord and satisfaction. The Town of Acton will accept such check for payment without prejudice to the Town of Acton's right to recover the balance of such Rent or to pursue any other remedy available to the Town of Acton. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than Tenant or Permitted Sublessees, the Town of Acton may collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the Rent reserved in this Lease. No such collection will be deemed a waiver of the covenant in this Lease against assignment and subletting, or the acceptance of the assignee, subtenant, or occupant as Tenant, or a release of Tenant from the complete performance by Tenant of its covenants in this Lease.

18.23 Cumulative Rights. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

18.24 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

18.25 Non-Recourse. Notwithstanding any provision hereof to the contrary, or any other express or implied agreement between the parties, or any act or course of conduct hereunder, the obligations of the parties set forth herein shall solely be those of the entities named in the first paragraph of this Lease, and no officer, director, shareholder, general or limited partner, member, employee or agent of any party hereto or any Permitted Institutional Mortgagee shall have any personal liability whatsoever under this Lease, it being understood and agreed that the Town of Acton shall look solely to the assets of Tenant (or in the case of any Permitted Institutional Mortgagee, solely to the interest of such Permitted Institutional Mortgagee in and to the Premises) for recourse hereunder. Notwithstanding any provision in this Lease to the contrary, in the event that any Permitted Institutional Mortgagee shall acquire title to or otherwise take possession of the Premises, such Permitted Institutional Mortgagee shall have no obligation, nor incur any liability, beyond such Permitted Institutional Mortgagee's then interest, if any, in the Premises and the Town of Acton shall look exclusively to such interest of such Permitted Institutional Mortgagee, if any, in the Premises for the payment and discharge of any obligations imposed upon such Permitted Institutional Mortgagee hereunder or under the Lease, and such Permitted Institutional Mortgagee is hereby released or relieved of any other obligations hereunder and under the Lease. The Town of Acton agrees that with respect to any money judgment which may be obtained or secured by the Town of Acton against any Permitted Institutional Mortgagee, the Town of Acton shall look solely to the estate or interest owned by the Permitted Institutional Mortgagee in the Premises, or interest therein and the Town of Acton will not collect or attempt to collect any such judgment out of any other assets of such Permitted Institutional Mortgagee.

18.26 Intent and Effect. The terms and conditions of this Lease have been freely accepted by Tenant and the Town of Acton. The provisions and restrictions contained herein exist to further the purposes and goals of the Town of Acton set to create and preserve decent and affordable housing opportunities in the Town of Acton for Very Low Income Households and Low Income Households who are often denied such opportunities for lack of financial resources.

[signatures on following page]

EXECUTED as of the date first set forth above.

THE TOWN OF ACTON:

Town of Acton

By:

Its:

TENANT:

Common Ground Development Corporation

By:

Its:

Exhibits

Exhibit A – Legal Description of Premises

Exhibit B – Plot Plan of Premises

Exhibit C – Schematic Design Plans

Exhibit D – Critical Path Time Schedule

Exhibit E – Environmental Reports

EXECUTED as of the date first set forth above.

TOWN OF ACTON, MASSACHUSETTS
By its Board of Selectmen



Walter M. Foster, Chairman

F. Dore' Hunter

Lauren S. Rosenzweig

Peter K. Ashton

Andrew D. Magee

TENANT:

Common Ground Development Corporation

By:
Its:

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